

First Amendment to Trust Water Right Agreement

This First Amendment to Trust Water Right Agreement ("First Amendment") is made and entered into as of the 25 day of MARCH, 2013, by and between the Washington State Department of Ecology, Yakima River Basin Trust Water Rights Program ("Ecology") and **Aqua Mitigation LLC**, a Washington limited liability company ("Aqua").

A. WHEREAS, Ecology and Aqua entered into that certain Trust Water Right Agreement dated August 9, 2011; and

B. WHEREAS, Ecology and Aqua are now desirous of amending that Trust Water Right Agreement to allow for and provide a mechanism for the Department of Ecology to expedite processing of mitigation transfers;

NOW, THEREFORE, in consideration of the mutual benefits contained herein and contained within the Trust Water Right Agreement, Ecology and Aqua hereby agree to amend the Trust Water Right Agreement as follows:

1. Paragraph 3 of the Trust Water Right Agreement is amended to read as follows:

3. The process for Aqua's sale of any uncommitted Water in Trust to third parties, and the corresponding issuance of mitigated permits or water budget neutrality determinations by Ecology, shall be as follows:

3.1 Aqua will propose or enter into a contract with a third party to provide a portion of the Water in Trust as mitigation on such terms consistent with this Agreement as Aqua may elect, Aqua or such third party shall make applications to Ecology (or, if appropriate, to a water conservancy board) for a water budget neutrality determination or to appropriate surface or ground water at the desired location and for the intended use and quantities, together with all regularly required supporting information (each, hereinafter a "New Application"). As part of the New Application, Ecology will assist in designating the specific quantity of the Water in Trust as required to offset the consumptive loss associated with the uses described on the New Application.

3.2 Ecology will process the New Application in accordance with applicable law, utilizing such portion of the Water in Trust as reasonably needed under the quantity allocation set out in Exhibit E which, together with any other proposed mitigation measures, shall reasonably offset the impacts of such new withdrawal.

3.3 If necessary or appropriate, Ecology will complete a Water Transfer Working Group ("WTWG") project description and will present it to the WTWG. Ecology, in consultation with the U.S. Bureau of Reclamation, will determine if some or all of the Water that Aqua or the third party applicant designates would be assigned to the Reclamation-Ecology storage and delivery exchange contract.

3.4 Ecology will investigate the New Application and recommend issuance or denial of a permit or a determination of water budget neutrality based on applicable policy, rules, and law. Ecology's review of New Application shall also include the following considerations:

3.4.1 In order to develop and confirm performance standards as set forth in any respective report of examination or determination of water budget neutrality, Ecology and such third party shall provide information to reasonably show or estimate, as the case maybe, that the consumptive uses of the proposed project, when offset by the mitigation water allocated from the Trust and any other proposed mitigation measures, do not increase the consumptive use of water.

3.4.2 With regard to domestic uses and so long as withdrawals are metered to users; and the subject project is, or will be made, subject to covenants, conditions and restrictions which impose water use restrictions for both inside and outside purposes which will be recorded against the project; and reasonable water use enforcement provisions are provided; and return flows are provided for through an approved septic or other waste treatment facility reasonably designed to infiltrate treated water in the general area from which it is being withdrawn, the allocation of Trust Water for mitigation shall be at a rate of not more than .392 acre-feet (350 gallons per day on a year round basis) per equivalent residential unit ("ERU"), or such other amount as required by the Kittitas County Department of Health for serving a residential dwelling.

3.4.3 Ecology's permit or determination of water budget neutrality relative to a New Application will specify the conditions and limitations on the use of water in a manner consistent with the Water held in the Yakima Pilot Water Bank as mitigation. Conditions relating to measuring and reporting water use and for reimbursement of any Ecology costs to administer the Reclamation-Ecology Exchange Contract will also be included in the permit.

3.4.4 If issued, Ecology's permit or determination of water budget neutrality relative to a New Application will specify the conditions and limitations on the use of water in a manner consistent with the Water held in the Yakima Pilot Water Bank as mitigation.

3.4.5 If all or a portion of the Water is deemed adequate to fully mitigate a New Application, then the third party, upon receipt of final approval from Kittitas County of its land use applications for development of the real property that is the intended place and purpose of use of the New Application, and exhaustion of all applicable appeal periods thereof, the third party applicant (beneficiary of the Water) shall execute such documentation as necessary to irrevocably and perpetually commit the Water to Trust for purposes of offsetting the New Application.

3.5 If Ecology intends to issue an ROE for a New Application, it will publish the draft ROE on its internet site. If Ecology intends to issue a determination of water budget neutrality, it shall notify Aqua. If the form and substance of the draft ROE or water budget neutrality determination is acceptable to Aqua or the third party, Aqua or the third party applicant promptly shall cause an escrow to be opened for such transaction at the Escrow Agent. All escrow costs shall be borne by Aqua Ranch, or as otherwise set forth in the written escrow instructions or sale agreement between Aqua and the third party. Aqua and any third party having the right to do so under an agreement with Aqua, may, at any time prior to closing of escrow and without cause or penalty, withdraw the New Application or otherwise prevent any allocation of any portion of the Water to such transaction.


2. Except as amended herein, all other terms and conditions of the Trust Water Right Agreement remain in full force and effect as first written.

This First Amendment is executed as of the date first above written.

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY:**

AQUA MITIGATION LLC:

By: 
Print Name: MARK KEMNER
Its: SECTION MANAGER

By: 
Print Name: Mitch Williams
Its: MANAGER

INDEX OF EXHIBITS
TO FIRST AMENDMENT TO TRUST WATER RIGHT AGREEMENT

E Quantity Allocation for New Application

Exhibit E (Quantity Allocation for New Application)

Consumptive Water Use Calculator														
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="background-color: #4a7ebb; color: white;">Percent of Water Consumed by Rule</th> </tr> <tr> <th style="background-color: #e6f2ff;">Water Use</th> <th style="background-color: #e6f2ff;">% Consumed</th> </tr> </thead> <tbody> <tr> <td>In-house Use with a On-site Septic System</td> <td>30%</td> </tr> <tr> <td>In-house Use Hooked up to a Sanitary Septic System</td> <td>20%</td> </tr> <tr> <td>Outdoor Use (Irrigation)</td> <td>90%</td> </tr> </tbody> </table>					Percent of Water Consumed by Rule		Water Use	% Consumed	In-house Use with a On-site Septic System	30%	In-house Use Hooked up to a Sanitary Septic System	20%	Outdoor Use (Irrigation)	90%
Percent of Water Consumed by Rule														
Water Use	% Consumed													
In-house Use with a On-site Septic System	30%													
In-house Use Hooked up to a Sanitary Septic System	20%													
Outdoor Use (Irrigation)	90%													
How Much Water Do I need?														
In-house Use with a On-site Septic System	1		350											
In-house Use Hooked up to a Sanitary Septic System	0		350											
* This value is a default value based on Dept of Health minimum service requirements.														
Irrigation	500	0.011	1.89											
** This value is based on an irrigation requirement for pasture/turf in the Okla. Exm. area and an irrigation efficiency of 80% consistent with WAC 179-539A.														

TOTAL CONSUMED	TOTAL USE
Consumptive Water Use (ac-ft)	Water Use (ac-ft)
0.118	0.392
0.000	0.000
Consumptive Water Use (ac-ft)	Water Use (ac-ft)
0.019	0.022
Total Consumptive Water Use (ac-ft)	Total Water Use (ac-ft)
0.137	0.414
The total consumptive water use is based on the assumptions in WAC 179-539A.	Total water use is the quantity of water required for the project.

Trust Water Right Agreement

This Trust Water Right Agreement is made and entered into as of the 9th day of AUGUST, 2011, by and between the Washington State Department of Ecology, Yakima River Basin Trust Water Rights Program ("Ecology") and Aqua Mitigation LLC, a Washington limited liability company ("Aqua").

A. WHEREAS, Ecology is the trustee of the Yakima River Basin Trust Water Rights Program as authorized under Chapter 90.38 RCW (the "Trust"); and

B. WHEREAS, Aqua is the owner of certain water rights in Manastash Creek, a tributary of the Yakima River as more particularly described and confirmed under Claim No. 01968 in the Conditional Final Order issued in Subbasin 11, dated June 14, 2001 in *Ecology v. Acquavella*, Yakima County Superior Court No. 77-2-01484-5 ("*Acquavella*"), as divided pursuant to that certain Order to Divide Water Right and Join Parties entered on October 14, 2010;

C. WHEREAS, the place of use and purpose of use of the water rights were changed from irrigation to instream flow in Change Application Nos. KITT-10-11 (CS4-01553sb11a) and KITT-10-12 (CS4-01968sb11a) approved by the Kittitas County Water Conservancy Board and approved by Ecology in its certain letter modifying the transfers dated April 8, 2011 and May 17, 2011 (the "Modification Letters"); and

D. WHEREAS, the water rights designated as Trust Water Right A in both of the Modification Letters have been sold to Ecology to be used in perpetuity for instream flow purposes; and

F. WHEREAS, the water rights identified as Trust Water Right B in both of the Modification Letters and set forth on Exhibits A-1 and A-2 (the "Mitigation Water Rights") have an authorized purpose use for mitigation of future residential use; and

G. WHEREAS, Aqua and Ecology now desire to place the Mitigation Water Rights in trust and establish the terms and conditions under which said Mitigation Water Rights may be used for mitigation purposes; and

H. WHEREAS, Aqua submitted Trust Water Right Applications to Ecology, WRTS File Nos. CS4-01553sb11a (KITT-10-11) and CS4-01968sb11a (KITT-10-12) (the "Applications"), to place the Water into the Trust for the purpose of enhancing in-stream flows, providing mitigation water to offset and allow for the permitting of new water rights to be used for any lawful purpose, and providing mitigation water to mitigate for current water uses within the Yakima River basin; and

I. WHEREAS, Ecology has accepted the Applications, has completed its examination of the extent and validity of the Water based on Kittitas County Water Conservancy Board Report of Examination, modified and confirmed by Ecology's Modification Letters and is prepared to issue its Trust Water Right Report of Examination concerning the extent and validity of the Water (the "ROE") and its trust water certificate (the "Certificate"). Attached as Exhibit B hereto is the ROE and the Certificate, which documents that determination, including quantification of the consumptive quantity associated with the right; and

J. WHEREAS, subject to the terms of this Agreement and the Applications, Ecology confirms that it is willing, able and authorized to hold the Water in the Trust and does accept the Water in trust for the intended purposes as provided for herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and undertakings as hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, Ecology and Aqua hereby agree as follows:

1. The purpose of this Agreement and the primary reason Aqua is willing to place the Water into the Trust is to provide senior water rights as off-setting mitigation that will allow Aqua or third parties to apply for and receive new ground water withdrawal or surface water diversionary permits within the Yakima River basin. An additional purpose of this agreement is to place water into Trust to provide a senior water right as offsetting mitigation that will allow Aqua or a third party to apply for and receive mitigation for existing groundwater withdrawals or surface water diversion permits. These water rights will be mitigated by way of a permanent designation of such portion of Aqua's beneficial interest in the Water in Trust as reasonably required to ensure no impairment to the total water supply available in the Yakima River ("TWSA") or other water rights; provided that any portion of such mitigation may also be provided by other means.

2. This Agreement shall be effective upon its mutual execution, and the Trust shall commence upon the transfer of the mitigation water rights to Ecology as hereinafter provided. The term of this Agreement shall then be for so long as any portion of the Water remains in the Trust (the "Term"). The escrow shall be opened at AmeriTitle, Ellensburg, Washington (the "Escrow Agent") upon the mutual execution of this Agreement and its deposit with the Escrow Agent.

2.1 Aqua shall transfer the mitigation water rights to Ecology within thirty (30) days of the occurrence of the last of the following events: mutual execution of all agreements and documents contemplated by or collateral to this Agreement; Aqua's deposit of an executed quit claim deed in recordable form of the Water to the Trust substantially in the form of Exhibits C-1 and C-2 attached hereto and incorporated herein (the "Deed"); the giving of all requisite public notices for actions contemplated or referred to herein; the deposit of Ecology's letter accepting the Water into the Trust (the "Acceptance"); the deposit of Ecology's record of decision and/or modification letters, in a form and content acceptable to Aqua; and the expiration of all notice, comment and appeal periods related to the Ecology's record of decision and/or modification letters. The parties shall execute appropriate instructions to an Escrow Agent designated by the parties, and all escrow costs shall be shared equally by the parties.

2.2 Upon closing, the Escrow Agent shall record the Deed with the Kittitas County Auditor and/or such other places as may be appropriate and shall deliver the ROE and Certificate to Aqua.

3. Once this agreement is executed, Aqua and Ecology may begin the process of designating parties to receive mitigation credit based upon the Water held in trust. The process for Aqua to identify recipients of mitigation credit and for Ecology to issue mitigated permits is as follows:

3.1 In the event Aqua shall propose or enter into a contract with a third party to provide a portion of the Water in Trust as mitigation on such terms consistent with this Agreement as Aqua may elect, Aqua or such third party shall make application to Ecology (or, if appropriate, to a water conservancy board) to appropriate surface or ground water at the desired location and for the

intended use and quantities, together with all regularly required supporting information (hereinafter a "New Application"). As part of the New Application, Aqua will designate the specific quantity of the Water in Trust as required to offset the consumptive use associated with the uses described on the New Application. Aqua will also co-sign the New Application.

3.2 Upon receipt of a complete New Application, Ecology, pursuant to WAC 173-539A-060 or WAC 173-152-050(2)(g), as now existing or hereafter amended or such other laws or rules as may from time to time apply to the priority processing of water right transfers, shall accept and timely process the New Application under RCW 90.03.260-.340 and Chapter 90.44 RCW utilizing such portion of the Water in Trust as reasonably needed under the quantity allocation designated by Aqua in Paragraph 3.1 which, together with any other proposed mitigation measures, shall reasonably offset the impacts of such new withdrawal.

3.3 Ecology will prepare a public notice and send it to the applicant for publication in a newspaper with general circulation in the area as required by RCW 90.03.

3.4 The applicant must publish the notice and ensure that the newspaper transmits an affidavit of publication to Ecology.

3.5 Ecology will, if necessary, complete a Water Transfer Working Group ("WTWG") project description and will present it to the WTWG; provided, however, that in the future the WTWG ceases to exist or determines it does not need nor desire to review the New Application then Ecology shall not be required to present the New Application to the WTWG. Ecology, in consultation with the U.S. Bureau of Reclamation, will determine if some or all of the Water Aqua designates would be assigned to the Reclamation-Ecology storage and delivery exchange contract or such other existing agreement between Ecology and any other entity.

3.6 Ecology will investigate the New Application and prepare a Report of Examination recommending issuance or denial of a permit based on applicable policy, rules, and law. Ecology's review of New Applications shall also include the following considerations:

3.6.1 In order to develop and confirm performance standards as set forth in any respective report of examination, Aqua and/or such third party shall provide information to reasonably show or estimate, as the case may be, that the consumptive uses of the proposed project, when offset by the mitigation water allocated from the Trust and any other proposed mitigation measures, do not increase the consumptive use of water.

3.6.2 With regard to new applications which seek approval of new or mitigation of existing domestic uses and so long as withdrawals are metered to domestic users; and the subject project is, or will be made, subject to covenants, conditions and restrictions which impose water use restrictions for both inside and outside purposes which will be recorded against the project; reasonable water use enforcement provisions are provided; and return flows are provided for through an approved septic or other waste treatment facility reasonably designed to infiltrate treated water in the general area from which it is being withdrawn, the allocation of Trust Water for mitigation shall be at a withdrawal or diversionary consumptive use rate per equivalent residential unit ("ERU") of not more than 0.114 acre-feet of consumptive use per ERU unless such amount of consumptive use is changed by agreement of the

parties or can be lowered based on the particular circumstances of the proposed mitigation and new or existing use..

3.7 In order to expedite and simplify Ecology's investigation of the New Application and preparation of Reports of Examination as required in paragraph 3.6 and to provide Aqua certainty on which Mitigation Water Rights can be used where, Ecology and Aqua have identified certain areas where the Mitigation Water Rights are best suited to be relied on without the new use of water causing impairment to existing water rights or detriment to the public interest. Areas where the Mitigation Water Rights are best suited are referred to as "Green Zones;" areas where the Mitigation Water Rights might result in impairment to existing right or prove detrimental to the public interest are referred to as "Yellow Zones;" areas where the Mitigation Water Rights are likely unsuitable for mitigating new uses are referred to as "Red Zones" (collectively referred as "Zones"). The Green Zones, Yellow Zones and Red Zones for each Mitigation Water Right are set forth in Exhibits D-1 and D-2.

3.7.1 Future Adjustment of Zones and Quantities. Aqua and Ecology agree to meet in the future at intervals to be determined by Aqua and Ecology, but not less than annually, to review and adjust the Zones described above in paragraph 3.7. In addition to review of the Zones, the parties recognize that, over time, more information and data will be developed as to the quantity of water actually consumed by homes in the given area may become available. Therefore, the parties agree as part of the annual review process to adjust the quantities set forth in Paragraph 3.6.2. If the parties agree to adjust or modify the Zones and/or quantities, then the new Zones and/or quantities will be established pursuant to an amendment of this Agreement.

3.8 Ecology's permit relative to the New Application will specify the conditions and limitations on the use of water in a manner consistent with the Water held in the Yakima Pilot Water Bank as mitigation. Conditions relating to measuring and reporting water use and for reimbursement of any Ecology costs to administer the Reclamation-Ecology Exchange Contract will also be included in the permit.

3.9 Ecology's permit shall also establish a development schedule. The development schedule shall establish the time by which the mitigation water approval in the ROE and permit shall be fully used. Once full use is attained, then Ecology, upon receipt of a complete Proof of Appropriation, shall issue a Certificate of Water Right. Upon issuance of a Certificate of Water Right, that portion of the mitigation water rights identified in the new application and confirmed for use in the ROE and permit and as used in the Proof of Appropriation, shall be permanently allocated to trust. At any point in time, up to the commencement of the withdrawal of water after issuance of a permit, the mitigation water right identified in the new application may be revoked by Aqua and/or the third party designated to receive the water right in the new application. In the event of said revocation, that portion of the mitigation water right shall remain in trust and, unless removed by Aqua pursuant to Paragraph 4, be available for re-designation by Aqua.

3.10 In the event Ecology is prepared to issue an ROE for a New Application, it will publish the draft ROE on its internet site or such other means of disseminating the proposed draft ROE.

4. Aqua shall have the right at any time to withdraw an Application, terminate this Agreement and remove from the Trust any portion of the Water that has not been permanently allocated as mitigation of other water uses as set forth in this Agreement.

5. Aqua may cause an escrow to be opened for such transaction between Aqua and the third party designated in the new application at the Escrow Agent upon the mutual execution and deposit of the fully executed agreement between Aqua and the third party applicant, if any, and the deposit of any other documents required for closing. The escrow may close within thirty (30) days of the occurrence of the last of the following events: mutual execution of all agreements and documents contemplated by or collateral to this Agreement; Aqua's deposit of an executed document in a form acceptable to Ecology permanently allocating a portion of the then available and unallocated Water in the Trust to the proposed purpose as set forth in the New Application; the giving of all requisite public notices for actions contemplated by such transaction; deposit of the ROE and the new water right permit, each in form and content acceptable to Aqua and such third party, if any; the expiration of all notice, comment and appeal periods related to the full implementation of this Agreement, the ROE, and the new water right permit; and the deposit of all monies, documents and things relevant and necessary to conclude the transaction between Aqua and any third party. All escrow costs shall be shared equally between Aqua and the third party. Aqua, and any third party having the right to do so under an agreement with Aqua, may, at any time prior to closing of escrow and without cause, withdraw the New Application or otherwise prevent any allocation of any portion of the Water to such transaction.

6. During the Term and in its capacity as a fiduciary, Ecology shall hold and manage the Water in trust pursuant to chapter 90.38 RCW and this Agreement as a part of the TWSA. Ecology:

6.1 Shall take no position and make no assertions that the quantities and beneficial use of the Water is other than as stated in Exhibits A-1 and A-2 and paragraph 3 above, and this representation shall also apply to any Water removed from the Trust;

6.2 Shall, in addition to the protections against relinquishment in RCW 90.03.380, 90.03.615 and 90.14.140, at all times during the Term manage, maintain, preserve and protect for the benefit of Aqua and its successors, designees and assigns all aspects and attributes of the Water as quantified in Exhibits A-1 and A-2, including, but not limited to, the priority date, the total diversionary right, instantaneous quantity, and annual consumptive quantity from impairment, challenges, claims and relinquishment;

6.3 Shall process all New Applications where portions of the Water is proposed as mitigation and shall take all steps necessary to comply with any restrictions imposed by other agreements to which Ecology may be subject, including, but not limited to memorandums of agreement and groundwater moratoriums or subsequently enacted water right processing rules; and

6.4 Shall not assess or charge Aqua any costs or fees for maintaining the Water in the Trust; provided that Ecology may charge third parties its regular costs and fees for water right applications, transfers and investigations or costs attributable to assignment of a portion of the Water to Ecology's USBR contract for storage and exchange contract.

7. In keeping with the purpose of this Agreement and as a material part of the consideration for this Agreement upon which its execution is dependent:

7.1 Aqua makes the following undertakings, representations and warranties to Ecology:

7.1.1 Aqua is a Washington limited liability company duly formed and authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

7.1.2 Each individual executing this Agreement on behalf of Aqua is duly authorized to execute and deliver this Agreement.

7.1.3 Upon its full execution, this Agreement is binding upon Aqua in accordance with its terms.

7.1.4 Aqua shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

7.2 Ecology makes the following undertakings, representations and warranties to Aqua:

7.2.1 Ecology is a division of the State of Washington duly formed and authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

7.2.2 Each individual executing this Agreement on behalf of Ecology is duly authorized to execute and deliver this Agreement.

7.2.3 Upon its full execution, this Agreement is binding upon Ecology in accordance with its terms.

7.2.4 Ecology shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

8. If either party defaults in its obligations under this Agreement; or if this Agreement, or a material portion thereof, be declared illegal or unenforceable; or, if either party, through no fault or action by such party, should be incapable or prevented from performing any material obligations or actions, the non-defaulting party in the event of a default or either party in any other event shall have the right to the following:

8.1 As the computation of damages may be difficult, continue this Agreement and bring an action to specifically perform this Agreement.

8.2 Declare the Agreement null and void, whereupon the parties shall cooperate to end the trust water right relationship in an orderly manner as follows:

8.2.1 Aqua shall identify all in-process designation agreements and inform Ecology of their status. Aqua shall not make representations regarding in-process designations and shall in each instance work with Ecology to determine whether an assignment should be completed. If Ecology agrees, the permit process will be completed promptly in accordance with applicable policies, rules, and law.

8.2.2 Ecology shall promptly convey to Aqua or its designee the portion of the trust water right not yet designated and assigned as mitigation for individual ground water and surface water permits. If any reserve has been set aside to address uncertainty (see paragraph 3.6) associated with the then-existing mitigated permits, Ecology will retain such reserve until it is either assigned to

individual permits or Ecology determines some or all of the reserve is unnecessary. Any reserve not needed shall be promptly conveyed by Ecology to Aqua.

8.2.3 Each party shall be responsible for their own costs associated with ending the trust water right relationship in an orderly manner.

8.3 Pursue any other remedy now or hereafter available.

8.4 In no event shall the termination of this Agreement alter or affect any Water previously allocated for mitigation or permits granted relative to New Applications.

9. This Agreement may be assigned by Aqua upon the giving of written notice to Ecology. This Agreement is binding upon and inures to the benefit of the parties to the Agreement as well as upon and to the benefit of their respective heirs, personal representatives, assigns and other successors in interest.

10. Any notice or communication required by this Agreement between Aqua and Ecology shall be given to the addresses set forth below:

To Ecology:

Water Resources Section Manager
Washington Department of Ecology
Central Regional Office
15 West Yakima Avenue, Suite 200
Yakima, Washington 98902-3452

To Aqua:

Aqua Mitigation LLC
1880 Quail Run Lane
Ellensburg, Washington 98926

11. No provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be unenforceable for any reason outside the control of the parties and subject to the provisions of Paragraph 8.2, the party finding itself unable to enforce the provision may, at its sole discretion, declare this entire Agreement to be null and void.

12. If either party fails to exercise its rights under this Agreement, it will not be precluded from subsequent exercise of its rights under this Agreement. A failure to exercise rights will not constitute a waiver of any other rights under this Agreement, unless stated in a letter signed by an authorized representative of the party and attached to the original Agreement.

13. Amendments to this Agreement must be in writing and signed by an authorized representative of each of the parties.

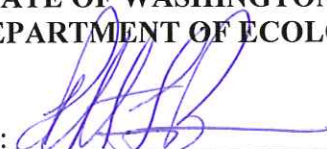
14. Each party shall protect, defend, indemnify, and hold the other hold harmless from and against their respective acts and omissions and for all third party claims arising out of or related to this Agreement.

15. This Agreement will be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to this Agreement shall be in Kittitas County, Washington.


16. If either party hereto is required to retain an attorney to enforce any provision of this Agreement, whether or not a legal proceeding is commenced, the substantially prevailing party shall be entitled to reasonable attorneys' fees regardless of whether at trial, on appeal, in any bankruptcy proceeding, arbitration matter or without resort to suit.

This Agreement is executed as of the date first above written.

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY:**

By: 
Print Name: ROBERT F. BARWIN
Its: ACTING SECTION MANAGER

AQUA MITIGATION LLC:

By: 
Print Name: Julie Williams
Its: member

INDEX OF EXHIBITS
TO TRUST WATER RIGHT AGREEMENT

- A-1 CS4-01968sblla (KITT-10-12) Trust Water Right B
- A-2 CS4S4-01553sblla (KITT-10-11) Trust Water Right B
- B ROE and Certificate
- C-1 Quit Claim Deed
- C-2 Quit Claim Deed
- D-1 Mitigation Water Right Zones
- D-2 Mitigation Water Right Zones

Exhibit A-1
(Trust Water Right B)

Court Claim No.: 01553
Claimant Name: Mitchell F. Williams and Julie A. Williams

Source: Manastash Creek
Use: Trust Water Rights Program

Period of Use: (1) April 1 – June 30
(2) July 1 – October 31

Quantity: (1) 0.047 cfs
(2) 0.024 cfs
and 14.1375 acre-feet/year of consumptive use

Priority Date: June 30, 1871

Point of Diversion: Does not apply as the water will no longer be diverted.

Place of Use: The primary reach is described as follows: within the ordinary high-water mark of Manastash Creek commencing at the Jensen and Keach Ditch Diversion, which is located 550 south and 650 feet east from the N¼ corner of Section 14 within the NW¼NE¼ of Section 14, T. 17 N, R. 17 E.W.M. and ending at the confluence of Manastash Creek and Yakima River; and

The secondary reach is described as follows: commencing at the confluence of the Manastash Creek and Yakima River and terminating at the confluence of the Columbia River and Yakima River

Exhibit A-2
(Trust Water Right B)

Name: Amerivest Development LLC, a Washington limited liability company

Source: Manastash Creek

Use: Trust Water Rights Program

Period of Use: April 1 through October 31 for irrigation

Priority Date: June 30, 1874

Quantity: .234 cfs from April 1 through June 30; .118 cfs from July 1 through October 31;
71.753 acre-feet/year of consumptive use for irrigation

Point of Diversion: Not applicable because the water will be placed in trust

Place of Use: The primary reach is described as follows: within the ordinary high-water mark of Manastash Creek commencing at the Jensen and Keach Ditch Diversion, which is located 550 south and 650 feet east from the N¼ corner of Section 14 within the NW¼NE¼ of Section 14, T. 17 N, R. 17 E.W.M. and ending at the confluence of Manastash Creek and Yakima River; and

The secondary reach is described as follows: commencing at the confluence of the Manastash Creek and Yakima River and terminating at the confluence of the Columbia River and Yakima River

Exhibit B
(ROE and Certificate)

Auditors File Number

201108300635Time 8:38 Date 8/30/2011

After recording return to:

Jeff Slothower
Lathrop, Winbauer, Harrel, Slothower & Denison
P.O. Box 1088
Ellensburg, WA 98926

DOCUMENT TITLE:	Quit Claim Deed (as to Water Rights)
GRANTOR:	AQUA MITIGATION LLC, a Washington limited liability company
GRANTEE:	STATE OF WASHINGTON, TRUST WATER RIGHTS PROGRAM
LEGAL DESCRIPTION:	Portions of the SW ¼ of Section 8, Township 17 N, Range 18 E., W.M.
ASSESSOR'S TAX PARCEL NUMBER(S):	956861; 956862; 956863; 956864; 956865; 956866; 954943; 954942; 954941; 954936; 954937; 954938; 954939; 954940

QUIT CLAIM DEED
(as to Water Rights)

THE GRANTOR, AQUA MITIGATION LLC, a Washington limited liability company ("Aqua"), for and in consideration of a transfer to the Yakima River Basin Trust Water Rights Program pursuant to a revocable Trust Water Rights Agreement and no monetary consideration, and pursuant to WAC 458-61A-211(2)(g), conveys and quit claims to the STATE OF WASHINGTON, TRUST WATER RIGHTS PROGRAM, Grantee, all of Grantor's right, title, interest and beneficial use of, in and to the portion of the water right confirmed under Court Claim Number 01968 in the Conditional Final Order issued in Subbasin 11 (Manastash Creek), dated June 14, 2001, in *State of Washington, Department of Ecology, v. James J. Acquavella, et al.*, Yakima County Superior Court Cause No. 77-2-01484-5 and more fully described as follows:

Name: Aqua Mitigation LLC, a Washington limited liability company

Source: Manastash Creek

Use: Instream flow (intended for mitigation of future residential water use)

Period of Use: April 1 through October 31

Priority Date: June 30, 1874

Quantity: .234 cfs from April 1 through June 30; .118 cfs from July 1 through October 31;
71.53 acre-feet of consumptive use

Point of Diversion: Does not apply as the water will no longer be diverted.

Place of Use: The primary reach is described as follows: within the ordinary high-water mark of Manastash Creek commencing at the Jensen and Keach Ditch Diversion, which is located 550 south and 650 feet east from the NW¼ corner of Section 14, T. 17 N, R. 17 E.W.M. and ending at the confluence of Manastash Creek and Yakima River.

The secondary reach is described as follows: Commencing at the confluence of Manastash Creek and the Yakima River and terminating at the confluence of the Columbia River and the Yakima River.

and incorporated herein by reference (hereinafter referred to as the "Amerivest Water Right"); which water right was appurtenant to the real property situated in the County of Kittitas, State of Washington, legally described as follows:

44.59 acres of property legally described as follows:

Lot 19 of that Certain survey as recorded in Book 29 of Surveys at page 174, under Auditor's File Number 200312040048, records of Kittitas County, State of Washington which is bounded by a line described as follows:

Beginning at the southwest quarter corner of Section 8, Township 17 North, Range 18 East, W.M., Kittitas County, State of Washington; thence north 01°18'18" east along the west boundary of Section 8, 49.53 feet to the north boundary line of Manastash Road; thence continuing north 01°18'18" east along the west boundary of said Section 8, 787.06 feet to the true point of beginning of said line; thence continuing north 01°18'18" east along the west boundary line of said Section 8 and the west boundary line of said Lot 19, 1393.68 feet; thence south 89°43'06" east, 160.83 feet to the beginning of a curve to the right having a radius of 273.00 feet; thence along said curve to the right an arc length of 169.27 feet, through a central angle of 35°31'35"; thence south 54°11'32" east, 99.41 feet to the beginning of a curve to the left having a radius of 273.00 feet, thence along said curve to the left an arc length of 169.27 feet, through a central angle of 35°31'35"; thence south 89°43'06" east, 137.49 feet; thence south 01°15'49" west, 429.28 feet; thence north 85°38'50" east, 606.25 feet; thence south 88°35'21" east, 721.98 feet; thence south 03°07'36" west, 567.98 feet; thence south 47°20'38" east, 148.25 feet; thence south 82°05'04" west, 1176.09

Lathrop, Winbauer, Harrel, Slothower & Denton L.L.P.
Attorneys at Law
PO Box 1088/201 West 7th Avenue
Ellensburg, WA 98926
Fax (509) 962-3093
Tel (509) 925-6916

feet; thence south 90°00'00" west, 957.41 feet to the true point of beginning and terminus of said line.

Situated in Section 8, Township 17 North, Range 18 East, W.M., Kittitas County, State of Washington.

provided, however, Grantor does not warrant and makes no warranty as to Grantee's ability to transfer or use the Amerivest Water Right to other purposes of use or places of use, nor does the Grantor warrant the quantity of water that the Washington State Department of Ecology may allow Grantee to transfer to other purposes of use or places of use;

SUBJECT TO the pendency of *State of Washington, Department of Ecology, v. James J. Acquavella, et al.*, Yakima County Superior Court Cause No. 77-2-01484-5; notice of which is given by Lis Pendens recorded on October 14, 1977, in Volume 90, page 589 under Kittitas County recording number 417302, and supplemental notice of Lis Pendens recorded on June 4, 1980, in Volume 131, page 63, under Auditor's File No. 442263; being an action for the determination of the rights to divert, withdraw, or otherwise make use of the surface waters of the Yakima River Drainage Basin, in accordance with the provisions of Chapters 90.03 and 90.44 Revised Code of Washington which action is not yet final.

AND SUBJECT TO the terms and conditions of the Report of Examination issued in Water Right Change Application No. KITT-10-12 (Ecology Control No. CS4-01968sb11a) and Ecology's approval of the change of the water rights in Ecology's approval letter dated April 8, 2011 and Ecology's amended approval letter dated May 17, 2011 and subject to the terms and conditions of the Trust Water Right Agreement between Grantor and Grantee.

Grantee shall assume any and all obligation that may be necessary to include Grantee as a party under *State of Washington, Department of Ecology, v. James J. Acquavella, et al.*, Yakima County Superior Court Cause No. 77-2-01484-5. Grantor shall cooperate with Grantee in executing any reasonably necessary documents relative thereto.

DATED this 19th day of August, 2011.

AQUA MITIGATION LLC

By:
Its:

Mitch Williams
Manager

Lathrop, Winbauer, Harrel, Slothower & Demson L.L.P.
Attorneys at Law
PO Box 1088/201 West 7th Avenue
Ellensburg, WA 98926
Fax (509) 962-8093
Tel (509) 925-6916

STATE OF WASHINGTON

)

) ss.

County of Kittitas

)

I certify that I know or have satisfactory evidence that Mitch Williams is the person who appeared before me, and said person acknowledged that they signed this instrument, and on oath stated that they are authorized to execute the instrument and acknowledged it as the Manager of Aqua Mitigation LLC, a Washington limited liability company, to be the free and voluntary act of such Limited Liability Company for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 19th day of August, 2011.



Amanda M. Clerf

Printed Name: AMANDA M. Clerf

Notary Public in and for the State of Washington

My commission expires: 08-09-12

F:\Slothower\Williams, Mitch\Trust Water Agreement with Ecology\Quit Claim Deed (Aqua Mitigation to State (America)) 8-15-11.doc



PLEASE TYPE OR PRINT

REAL ESTATE EXCISE TAX AFFIDAVIT

CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

This form is your receipt when stamped by cashier

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED

(See back of last page for instructions)

☐ Check box if partial sale of property

If multiple owners, list percentage of ownership next to name

1 SELLER GRANTOR	Name <u>AQUA MITIGATION LLC</u>	2 BUYER GRANTEE	Name <u>State of Washington, Trust Water Rights Program</u>
	a Washington Limited Liability Company		Department of Ecology
	Mailing Address <u>P.O. Box 1702</u>		Mailing Address <u>15 W Yakima Ave, #200</u>
	City/State/Zip <u>Ellensburg, WA 98926</u>		City/State/Zip <u>Yakima WA 98902</u>
	Phone No. (including area code)		Phone No. (including area code)
3	Send all property tax correspondence to <input checked="" type="checkbox"/> Same as Buyer-Grantee		List all real and personal property tax parcel account numbers - check box if personal property
Name			Water Rights (See Exhibit A) <input checked="" type="checkbox"/> <input type="checkbox"/> None
Mailing Address			
City/State/Zip			
Phone No. (including area code)			

4 Street address of property N/A

This property is located in Kittitas County

☐ Check box if any of the listed parcels are being segregated from another parcel, are part of a boundary line adjustment or parcels being merged

Legal description of property (if more space is needed, you may attach a separate sheet to each page of the affidavit)

This is a conveyance of water rights, which are legally described on the attached Exhibit A.

5 Select Land Use Code(s): B3 - Water or Mineral rights
enter any additional codes:
(See back of last page for instructions)

Is this property exempt from property tax per chapter 84.36 RCW (nonprofit organization)? YES ☐ NO ☒

6 Is this property designated as forest land per chapter 84.33 RCW? YES ☐ NO ☒
Is this property classified as current use (open space, farm and agricultural, or timber) land per chapter 84.34? ☒ ☐
Is this property receiving special valuation as historical property per chapter 84.26 RCW? ☐ ☒

If any answers are yes, complete as instructed below

(1) NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE)

NEW OWNER(S): To continue the current designation as forest land or classification as current use (open space, farm and agriculture, or timber) land, you must sign on (3) below. The county assessor must then determine if the land transferred continues to qualify and will indicate by signing below. If the land no longer qualifies or you do not wish to continue the designation or classification, it will be removed and the compensating or additional taxes will be due and payable by the seller or transferor at the time of sale. (RCW 84.33.140 or RCW 84.34.108) Prior to signing (3) below, you may contact your local county assessor for more information.

This land ☐ does ☐ does not qualify for continuance

DEPUTY ASSESSOR 8-2-11 DATE

(2) NOTICE OF COMPLIANCE (HISTORIC PROPERTY)
NEW OWNER(S): To continue special valuation as historic property, sign (3) below. If the new owner(s) does not wish to continue, all additional tax calculated pursuant to chapter 84.26 RCW, shall be due and payable by the seller or transferor at the time of sale.

(3) OWNER(S) SIGNATURE

PRINT NAME

7 List all personal property (tangible and intangible) included in selling price.

If claiming an exemption, list WAC number and reason for exemption

WAC No. (Section/Subsection) WAC 458-61A-211(2)(a)

Reason for exemption Transfer to a revocable trust

Type of Document QCD

Date of Document August 19th, 2011

Gross Selling Price \$ 0.00

*Personal Property (deduct) \$

Exemption Claimed (deduct) \$

Taxable Selling Price \$ 0.00

Excise Tax - State \$ 0.00

0.0025 Local \$ 0.00

*Delinquent Interest: State \$

Local \$

*Delinquent Penalty \$

Subtotal \$ 0.00

*State Technology Fee \$ 5.00

*Affidavit Processing Fee \$

Total Due \$ 0.00

A MINIMUM OF \$10.00 IS DUE IN FEES AND/OR TAX
*SEE INSTRUCTIONS

8 I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Signature of Grantor or Grantor's Agent [Signature]

Name (print) By JULIE A WILLIAMS

Date & city of signing: 8-9-11 Ellensburg

Signature of Grantee or Grantee's Agent [Signature]

Name (print) DAVID F BARKER

Date & city of signing: 8-9-11 Ellensburg

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).

REV 84.0001ae (5/31/11)

THIS SPACE - TREASURER'S USE ONLY

Stothamer, Jr.

08-30-2011

Stothamer

2011-1299
TAXPAYER

Exhibit A to Real Estate Excise Tax Affidavit

Description of the Water Right to Be Conveyed:

Court Claim No.: 01968

Claimant Name: Aqua Mitigation LLC, a Washington limited liability company

Source: Manastash Creek

Use: Instream flow (intended for mitigation of future residential water use)

Period of Use: April 1 through October 31

Quantity: .234 cfs from April 1 through June 30; .118 cfs from July 1 through October 31; 71.53 acre-feet of consumptive use

Priority Date: June 30, 1874

Point of Diversion: Does not apply as the water will no longer be diverted.

Place of Use: The primary reach is described as follows: within the ordinary high-water mark of Manastash Creek commencing at the Jensen and Keach Ditch Diversion, which is located 550 south and 650 feet east from the N¼ corner of Section 14 within the NW¼NE¼ of Section 14, T. 17 N, R. 17 E, W.M. and ending at the confluence of Manastash Creek and Yakima River.

The secondary reach is described as follows: Commencing at the confluence of Manastash Creek and the Yakima River and terminating at the confluence of the Columbia River and the Yakima River.

Tax Parcel Number(s) of Prior Place of Use: 956861; 956862; 956863; 956864; 956865; 956866; 954943; 954942; 954941; 954936; 954937; 954938; 954939; 954940

SUBJECT To the pendency of *State of Washington, Department of Social Services, v. Evans*, et al., No. 00-00000.